

14 May, 2013

Mr. Christian Mikula
Manager, Consumer Credit Unit
Retail Investor Division
The Treasury
Langton Crescent
PARKES ACT 2000

Dear Christian,

Point of Sale Discussion Paper – National Consumer Credit Protection Act (NCCPA)

I have only recently been provided with a copy of the Australian Finance Conference's (AFC) response to the Discussion Paper which outlined AFC member's positions in relation to the proposed options for regulation or exemption of Point of Sale (POS) vendors, including motor dealers. Whilst Toyota Finance Australia Limited (TFAL) is an AFC member, I thought it important that Toyota Finance Australia Limited's (TFAL) unique position and its preferred options be outlined in a little more detail.

About TFAL

TFAL is a wholly owned subsidiary of Toyota Financial Services, Japan which is itself a wholly owned subsidiary of Toyota Motor Corporation of Japan (TMC). TFAL was the first overseas finance company established by TMC in 1982 to support the sale of Toyota vehicles in Australia. Today the Toyota Financial Services businesses operate in 34 countries worldwide. TFAL is now an integral part of the Toyota family in Australia partnering, the local manufacturer and distributor of Toyota and Lexus vehicles in Australia, Toyota Motor Corporation Australia (TMCA), in the sale and financing of Toyota and Lexus vehicles by Toyota and Lexus dealers throughout Australia. TFAL has also established and provides wholesale finance and retail sales support to the Toyota and Lexus dealer network throughout Australia

About TFAL's products

TFAL currently offers regulated consumer credit in the form of loans secured by a mortgage over financed motor vehicles. TFAL has not introduced a consumer lease. TFAL has a small portfolio of regulated housing loans however this product is currently in run down mode. TFAL has no present intention to introduce any other regulated consumer finance products at this time.

About TFAL's dealer network

TFAL is currently the first choice financier for 99% of the Toyota dealer network represented by 278 out of 281 dealerships on a first choice basis and 100% of the Lexus dealer network, 23 dealerships, on a first choice basis. For nationally operating joint TFAL and TMCA programs, TFAL is represented by 100% of the Toyota and Lexus dealer network. TFAL also is the first choice financier for an additional 136 non-Toyota franchised dealerships where their principal franchise is Toyota or Lexus. TFAL has essentially adopted the model

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first choice/second choice model referred to in Regulation 23 without the complexity of the model referred to in Option 2 of the Discussion Paper.

I believe that TFAL is unique amongst motor vehicle manufacturer/ affiliated credit providers because of this high level of representation in the Toyota and Lexus dealer network. This degree of engagement highlights the importance to TFAL of a simple and effective licensing regime and forms the basis for TFAL's support for the retention of the existing POS exemption from licensing of its dealer network.

Broker v Credit Representative

When the NCCP Act licensing regime was first proposed, TFAL surveyed its dealer network to determine whether the preference of individual dealers was for licensing (as a broker introducer) or appointment as TFAL's credit representative, the only real options available to dealers under the NCCPA.

Overwhelmingly, the TFAL dealer network indicated that their preferred position was for appointment as a TFAL credit representative rather than individual dealer/broker licensing, notwithstanding the limitations on their appointment under part 2-3 of the NCCPA. With the advent of the POS exemption, TFAL elected not to proceed with the appointment of dealers as Credit Representatives.

Interestingly, only three dealer groups in TFAL's dealer network elected to obtain an ACL to enable a group entity (not being the proposed TFAL representative) to carry on finance broking activities (commercial and consumer) separately from the group's TFAL representative activities.

Linked liability

TFAL's only initial concern with the appointment of its dealers as credit representatives was the potential liability of TFAL for the activities of those representatives under section 66 of the NCCPA where those dealers represented other licensees, albeit on a second choice basis. TFAL like most lenders have accepted over time the linked liability associated with dealing with linked suppliers. The introduction of the NCCP has not seen any increase of linked liability claims from its dealer network.

2010 POS Exemption

For TFAL the introduction of Regulation 23 exempting point of sale suppliers from the licensing provisions of the NCCP prior to the commencement of the NCCP obviated the need for the formal appointment of its dealers as credit representatives and reporting to ASIC. TFAL's protocols for the accreditation of its dealers as representatives have however closely mirrored the provisions for RG 209 for the appointment of credit representatives.

TFAL has continued to retain its first choice model of dealer engagement and has not seen any leakage from its dealer network of dealers seeking to take advantage of the opportunity deal outside the first choice model with multiple lenders under the current POS exemption.

Additionally, following the introduction of the NCCP (and notwithstanding the introduction of the POS exemption) TFAL believes that there has been an enhanced level of accreditation, training, scrutiny and supervision of its dealer network.

TFAL continues to support the current POS exemption.

Other Options

(i) Option 2

TFAL does not believe that this option for the licensing of vendor introducers is any more efficient or fairer than the “POS representative” model currently adopted by TFAL for its dealer network.

From the POS financier’s perspective, subject to satisfactory resolution of issues of joint liability under Section 66, TFAL believes that the “credit representative” model has always represented an acceptable fall back model for its dealings with its dealer network notwithstanding the compliance costs associated with this option.

As mentioned earlier TFAL has declined to deal with finance brokers and whilst the facility for dealers to become licensed as brokers has existed since July, 2010, TFAL does not expect that its dealer network will actively pursue this option, not simply because of the additional compliance costs and responsibilities they would incur, but because their activities can be adequately dealt with within either the POS or “credit representative” model.

(ii) Option 3

Whilst on its face this option is consistent with TFAL’s POS exemption model, TFAL does not believe that the creation of a class of “supplier representatives” provides any obvious benefits beyond the current POS exemption.

However, in the event that the POS exemption were to be repealed, the “supplier representative” model referred to in paragraph’s 93-105 of the Discussion Paper (based on the first choice option) would be acceptable to TFAL.

TFAL currently absorbs the costs of accreditation of its dealer network and FNI Managers within those dealerships. Based on TFAL’s nominal product range additional compliance costs are likely to be nominal.

TFA makes no comments on the proposals A-E in so far as they relate to Parts 3-1 and 3-3 of the discussion paper.

Conclusion

TFAL supports the continuation of the current POS exemption. In the event that the exemption is to be repealed, TFAL is comfortable with the proposed “supplier representative” exemption for first choice arrangements.

TFAL is aware that different options may appeal to different credit providers and respectfully requests that Treasury recognizes that NCCPA licensed lenders need to have the flexibility to be free to deal with both licensed and unlicensed vendor introducers should they choose to do so. TFAL is firmly of the view that the current POS exemption or proposed supplier representative first choice model do not by definition prejudice the interests of consumers and represent a viable option for lenders such as TFAL.

Thank you for the opportunity for TFAL to provide clarification its views of the Treasury's discussion paper.

Yours sincerely,

TOYOTA FINANCE AUSTRALIA LIMITED

A handwritten signature in black ink, appearing to read "Greg Johns". The signature is written in a cursive style with a large, looped initial "G".

G M JOHNS

Corporate Counsel & Secretary